

# Consultation on Safe Staffing Statutory Guidance

## Introduction

The Health and Care (Staffing) (Scotland) Act was passed in 2019. Commonly known as the Safe Staffing Act, it takes effect from 1 April 2024.

Statutory guidance setting out what organisations are required to do to comply with the Act is now being consulted on. The consultation opened on 22 June and closes on 19 September.

To have any positive impact on the staffing crisis, this statutory guidance must be the very best it can be. UNISON strongly encourages input from activists and members to inform the union's response to the consultation. This briefing for UNISON branches gives an overview of the draft guidance and the consultation questions so that activists and members can engage with this process.

## Context

The Act provides a statutory basis for the provision of 'appropriate' staffing in health and in social care settings. It is intended to ensure that the right people are in the right place with the right skills, at the right time. The Scottish Government states the guidance is deliberately not prescriptive but aims to support flexible local decision-making and flexibility, improve transparency around decision-making, and promote an open culture where staff are able to raise concerns.

The Act places duties on the following organisations: Health Boards, Special Health Boards delivering direct patient care (NHS 24, Scottish Ambulance Service, the State Hospital and the National Waiting Times Centre), NHS National Services Scotland, local authorities, integration authorities, care service providers, Healthcare Improvement Scotland, the Care Inspectorate, and Scottish Ministers.

Once the Act comes into force, relevant organisations will have to comply with its requirements and have regard to the statutory guidance issued by Ministers. Healthcare Improvement Scotland will be responsible for monitoring their compliance. The Care Inspectorate may also develop staffing methods for use in the care sector including staffing level tools.

## Overview

Chapters 2-14 cover **healthcare** and the duties on NHS organisations.

Chapters 15-17 cover **social care** and the duties on care providers, local authorities/integration authorities (commissioning & procurement from third parties), and the Care Inspectorate.

**This briefing focuses on the duties in healthcare.**

## KEY POINTS:

- **The Scottish Government is consulting on Statutory Guidance to ensure safe staffing in health and care settings.**
- **The consultation closes on 19 September 2023.**
- **UNISON Scotland will be responding to the consultation.**
- **We are looking for views from branches, activists and members to inform UNISON's response.**



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The statutory guidance defines key terms such as the meaning of 'safe' and 'appropriate', who a 'clinical leader' is, and what constitutes 'training'.

It sets out 'guiding principles' for ensuring safe staffing and the factors that must be considered in determining staffing, such as local context and patient needs and unmet needs.

It sets out what NHS organisations need to do to comply with duties and requirements around:

- **use of and spend on agency workers** and reporting about this,
- **real-time staffing assessment and risk escalation processes**, including the factors to be considered by lead professionals in risk assessing staffing levels, and in mitigating actual or potential risks.
- **arrangements for staff to disagree** with decisions made.
- **how to determine what constitutes a severe or recurrent risk**, and how to respond timeously to these.
- **seeking appropriate clinical advice on staffing**: defining what this means, who can provide this; when it must be sought and considered in decision-making; action when decisions are made that conflict with clinical advice given, the recording of disagreement, and reporting.
- **staff engagement**: what needs to be in place to encourage a safe and transparent culture where employees are encouraged to provide honest views and record disagreement.
- **ensuring adequate time & resources for clinical leaders to be able to plan and implement what is needed to ensure safe staffing**. It defines what is meant by 'clinical leader' (including in integrated settings), and how organisations should determine what constitutes 'adequate time' both for leading service delivery and managing & supporting staff. It clarifies that adequate time also means resources, such as access to clinical supervision, appropriate IT systems & training, admin, health & safety and management support.
- **what is needed to evidence compliance** with the duties on time and resources for clinical leaders, and how this should be factored into staffing establishments.
- **what staff training must be provided** to enable the organisation to comply with the Act, and how this must be evidenced.
- **use of the Common Staffing Method (CSM)** to decide if changes are needed to the staffing establishment, the process involved including staff consultation and engagement.
- **reporting requirements** to Scottish Ministers.
- **the role of Healthcare Improvement Scotland** in monitoring compliance with the Act.

### Consultation questions

There are only 5 consultation questions. However these are very broad and relate to every area covered by the guidance.

**Question 1(a)** Do you think the guidance is clear and easy to understand?

**Question 1(b)** Please detail any specific areas of the guidance that you found unclear or hard to understand.

**Question 2(a)** Do you think the guidance is comprehensive, in that it contains sufficient detail to be able to support organisations in meeting obligations placed on them by the Act?

**Question 2(b)** Please detail any specific areas where you felt information was missing or incomplete.

**Question 3** Do you have any other comments on the draft guidance?

### Action

UNISON is currently working on further information for branches and a consultation response tool for members. Please take the time to read the section that is applicable to you. Email your branch secretary for more info or on how you feel about this consultation: [click here to find your branch](#)

### Additional reading

- [draft Statutory Guidance Health and Care \(Staffing\) \(Scotland\) Act 2019](#)
- [Health and Care \(Staffing\) \(Scotland\) Act 2019](#)
- [Scottish Government consultation page](#)



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